

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CR No.7934 of 2013 (O&M)
Decided on: 07.10.2016**

Sukhchain Singh

....Petitioner

Versus

Prem Singh and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Sunil Chadha, Sr. Advocate
with Mr. Chetan Bansal, Advocate
for the petitioner.

None for respondent No.1.

REKHA MITTAL, J.

The present petition has been directed against order dated 22.11.2013 (Annexure P-5) passed by the Civil Judge (Jr. Division) Amritsar, whereby application (Annexure P-3) filed by the petitioner under Order 1 Rule 10 read with Section 151 of the Code of Civil Procedure (in short 'CPC') has been dismissed.

Counsel for the petitioner would contend that Prem Singh – respondent No.1/plaintiff filed a suit dated 14.11.2007 for specific performance of an agreement to sell dated 13.05.1994 alleged to be executed by respondents No.2 to 4 through respondent No.5 being their general attorney and to restrain the petitioner (initially arrayed as defendant No.5) from interfering into peaceful possession of respondent No.1 over the suit property. Respondents No.2 to 5 did not choose to appear and were proceeded against *ex parte*. The petitioner filed a detailed written statement dated 10.08.2010 averring that the alleged agreement to sell dated 13.05.1994 is a forged document and an

FIR already stands registered against respondent No.1 and the witnesses to the said agreement. It was further averred that vide sale deed dated 04.03.1999, respondents No.2 to 4 sold the suit property to Smt. Sharanjit Kaur and Smt. Sharanjit Kaur sold the suit property to the petitioner through a registered sale deed dated 04.09.2001 and delivered its possession to him but in September, 2007 respondent No.1 took forcible possession of the suit property without having any right thereon.

It is further submitted that the trial Court framed various issues on 29.08.2011 reproduced on pages 3 and 4 of the petition and when the case was pending for cross-examination of the plaintiff (PW3), the case was adjourned to 08.03.2013 for further cross-examination of the plaintiff. Before that date, plaintiff filed an application on 26.02.2013 for withdrawal of the suit against the petitioner, got recorded his statement in this regard on 26.02.2013 and eventually, the suit was dismissed as withdrawn against the petitioner on 08.03.2013 but the said order was passed at the back of the petitioner. It is vehemently argued that as respondents No.2 to 5 (defendants No.1 to 4 in the suit) have been left with no right or interest in the suit property after its sale in favour of Smt. Sharanjit Kaur vide sale deed dated 04.03.1999, in case the petitioner is not allowed to contest the proceedings, a serious prejudice shall be caused to his right in the suit property on the basis of sale deed dated 04.09.2001 executed by Smt. Sharanjit Kaur in his favour. It is further submitted that respondent No.1 with a *mala fide* intention withdrew the suit against the petitioner so that he may be successful in obtaining a decree of

specific performance on the basis of a forged and fabricated agreement to sell dated 13.05.1994 sought to be specifically enforced after expiry of a period of 13 years in the suit instituted in November, 2007. The last submission made by counsel is that presence of the present petitioner in the suit is not only proper but necessary for complete and effective adjudication of the matter in controversy and to allow him an opportunity to protect his interest on the basis of sale deed dated 04.09.2001.

There is no representation on behalf of respondent No.1 who failed to contest the proceedings.

I have heard counsel for the petitioner, perused the paperbook and the materials on record.

It is an undisputed position of the case that the present petitioner was impleaded as defendant No.5 in the suit filed in the year 2007 seeking specific performance of the agreement to sell dated 13.05.1994 purported to be executed by defendants No.1 to 3 through their attorney defendant No.4. On completion of pleadings of the parties, issues were framed and the trial was progressing when the application was filed on 26.02.2013 for withdrawal of the suit against the petitioner. As the petitioner has asserted his claim to the suit property on the basis of a registered sale deed dated 04.09.2001 and till the time the said sale deed is tested and held to be invalid or liable to set-aside, claim of the respondent/plaintiff to seek specific performance of agreement to sell dated 13.05.1994 is not likely to be accepted. In the given facts and circumstances, the petitioner may not be a necessary

party as the respondent has not claimed any relief against him on the basis of agreement dated 13.05.1994 but he is certainly a proper party to protect his right in the suit property on the basis of registered sale deed dated 04.09.2001. As has been rightly argued by counsel for the petitioner, in case the petitioner is not allowed to contest the proceedings and in absence of any contest by the defendants already on record, suit of the respondent/plaintiff is decreed *ex parte* for specific performance of an agreement to sell despite the fact that the suit property appears to have already been alienated twice after the alleged agreement of 1994, it would cause a serious prejudice to the petitioner. The mere fact that the respondent/plaintiff withdrew the suit against the petitioner being a *dominus litus*, in the given circumstances, cannot be allowed to stand in the way of the petitioner to contest the suit. This apart, a decree for specific performance passed on the basis of alleged agreement to sell may not be executable until the sale deeds in favour of the petitioner and his vendor are set-aside.

For the foregoing reasons, the petition is allowed, the impugned order is set-aside. The application filed by the petitioner for impleadment is allowed and the petitioner is ordered to be impleaded as defendant No.5 in the suit. The trial Court shall proceed with the case afresh from the stage the suit was dismissed as withdrawn against the petitioner, in accordance with law.

07.10.2016
yakub

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No